

Section 6.3. Additional Conditions Precedent to Bolingbrook's Obligations.

The obligations of Bolingbrook to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions (any or all of which may be waived by Bolingbrook):

- (a) The representations and warranties of Citizens contained herein shall be accurate in all material respects as if made on and as of the Closing Date except for changes occurring in the ordinary course of the operation of the Sewage Treatment Assets. Citizens shall have performed all of the obligations and complied with each and all of the covenants, agreements and conditions required to be performed or complied with on or prior to the Closing.
- (b) No action, suit, proceeding or investigation before any court, administrative agency or other governmental authority shall be pending or threatened wherein an unfavorable judgment, decree or order would prevent the carrying out of this Agreement or any of the transactions contemplated hereby, declare unlawful the transactions contemplated hereby, cause such transactions to be rescinded, or which might affect the right of Bolingbrook to own, operate or control the Sewage Treatment Assets.
- (c) All regulatory agencies shall have taken such action as may be required to permit the consummation of the transactions contemplated hereby and such actions shall remain in full

force and effect and shall be reasonably satisfactory in form and substance to Bolingbrook and its counsel.

- (d) Except as otherwise provided in Sections 6.1(c) and 6.1(d), the Sewage Treatment Assets shall not have been materially adversely affected in any way by any act of God, fire, flood, accident, war, labor disturbance, legislation (proposed or enacted), or other event or occurrence, whether or not covered by insurance, and there shall have been no material change in the Sewage Treatment Assets, which would have a material adverse effect thereon.

Section 6.4. Delay of Closing.

If the Closing Date is delayed because any of the aforesaid conditions precedent have not occurred by December 31, 1997, then Citizens and Bolingbrook shall retain their respective utility system assets until such time as the conditions can in fact be met and a new Closing Date scheduled. In no event, however, shall the Closing Date be extended beyond January 1, 2006.

ARTICLE VII

Closing

Section 7.1. Closing.

The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at such location as the parties hereto shall mutually agree in writing. The parties shall arrange for the Closing to occur on December 31, 1997 or at such earlier date as the parties hereto may mutually agree, provided that all necessary conditions precedent, as set forth herein, have been met.

The date of the Closing of the Asset Exchanges shall be referred to herein as the "Closing Date."

Section 7.2. Deliveries by Citizens.

At the Closing, Citizens shall deliver the following:

- (a) Such deeds (which shall be in the form of warranty deeds as provided by the statutes of Illinois), bills of sale, endorsements, assignments and other good and sufficient instruments of conveyance, transfer and consent, all in form and substance reasonably satisfactory to the counsel for Bolingbrook, as shall be necessary to vest in Bolingbrook the Sewage Treatment Assets as set forth in this Agreement, all of which shall contain a warranty against any person claiming by, through or under Citizens or any of its present affiliates while Citizens or any such affiliate was an owner of record of the asset transferred by the warranty deed;
- (b) The title policy and surveys for the real property included in the Sewage Treatment Assets;
- (c) A copy of the resolutions of the board of directors of Citizens authorizing the execution, delivery and performance of this Agreement by Citizens, and a certificate of the secretary or assistant secretary of Citizens as of the Closing Date, that such resolutions were duly adopted and are in full force and effect;
- (d) Assignments (with lessor's consents thereto) of leasehold interests in any leased real or personal property included in the Sewage Treatment Assets;

- (e) Tax proration agreement whereby Citizens agrees to pay any real estate or other taxes attributable to the Sewage Treatment Assets which have accrued prior to Closing but are not due or payable until after Closing; and
- (f) Such other instruments or documents as may be necessary or appropriate to carry out the transactions contemplated hereby. At the Closing, Citizens shall take all steps necessary to place Bolingbrook in actual possession and operating control of the Sewage Treatment Assets.

Section 7.3. Deliveries by Bolingbrook.

At the Closing, Bolingbrook shall deliver the following:

- (a) Such deeds (which shall be in the form of warranty deeds as provided by the statutes of Illinois), bills of sale, endorsements, assignments and other good and sufficient instruments of conveyance, transfer and consent, all in form and substance reasonably satisfactory to the counsel for Citizens, as shall be necessary to vest in Citizens the Water System Assets as set forth in this Agreement, all of which shall contain a warranty against any person claiming by, through or under Bolingbrook while Bolingbrook was an owner of record of the asset transferred by the warranty deed;
- (b) The Title Policy and Surveys for the real property included in the Water System Assets;
- (c) A copy of the resolutions of the Board of Trustees of the Village of Bolingbrook authorizing the execution, delivery and performance of this Agreement by Bolingbrook, and a

certificate of the Village Clerk of Bolingbrook as of the Closing Date, that such resolutions were duly adopted and are in full force and effect;

- (d) Assignments (with lessor's consents thereto) of leasehold interests in any leased real or personal property included in the Water System Assets;
- (e) Tax proration agreement whereby Bolingbrook agrees to pay any real estate or other taxes attributable to the Water System Assets which have accrued prior to Closing but are not due or payable until after Closing; and
- (f) Such other instruments or documents as may be necessary or appropriate to carry out the transactions contemplated hereby. At the Closing, Bolingbrook shall take all steps necessary to place Citizens in actual possession and operating control of the Water System Assets.

Section 7.4. Additional Deliveries at Execution.

Upon the execution of the subject Agreement, the parties shall execute, acknowledge and deliver the following:

- (a) An Agreement extending the existing Franchise Agreement dated as of September 8, 1971, the term of such Franchise Agreement to be extended to the earlier of (x) the Closing Date and (y) January 1, 2006; and
- (b) Such other instruments or documents as may be necessary or appropriate to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

Section 7.5. Additional Deliveries at Closing.

At the Closing, the parties shall execute, acknowledge and deliver the following:

- (a) A termination of the existing Franchise Agreement dated as of September 8, 1971;
- (b) A new Franchise Agreement between Citizens and Bolingbrook which shall have been negotiated by the parties prior to the Closing Date and which shall address the Water Tower issue;
- (c) A termination of the Wastewater Treatment and Sewer Service Agreement between Bolingbrook and Citizens, dated October 17, 1995 (the "STP #1 Agreement");
- (d) A termination of the Wheeling Contract, dated as of April 15, 1996, by and among Citizens, Citizens Water Resources Company, and Bolingbrook;
- (e) An assignment by Bolingbrook to Citizens of the Bolingbrook Lake Michigan Water Contract, dated as of April 15, 1996, by and among Citizens Water Resources Company and Bolingbrook; and
- (f) Such other instruments or documents as may be necessary or appropriate to carry out the transactions contemplated by this Agreement and to comply with the terms hereof, including but not limited to deeds and bills of sale.

Section 7.6. Transfer of Permits

In connection with the transfer of the Water System Assets described in Section 3.2, on the Closing Date Bolingbrook shall convey all of its right title and interest in all federal, state

and local permits, licenses, approvals and other authorizations ("Permits") necessary or desirable for the ownership and operation of the Water System Assets to Citizens. Bolingbrook will use its good faith reasonable efforts to effectuate the transfer of such Permits to Citizens and shall cooperate in good faith with all efforts by Citizens to have the Permits transferred to Citizens or issued or reissued in the name of Citizens including providing written authorization for such transfer or issuance or reissuance. Any filing, transfer or other fees associated with such transfer or issuance of Permits to Citizens shall be borne by Bolingbrook. Citizens or Bolingbrook, as applicable, will submit applications for approvals of any transfer or issuance or reissuance of such Permits by October 1, 1997. In the event transfer, issuance or reissuance is not completed by the Closing, pending transfer to Citizens or issuance of such Permits in Citizens' name, Citizens shall operate the System by license from and pursuant to Bolingbrook's authority.

In connection with the transfer of Sewage Treatment Assets described in Section 4.1, on the Closing Date Citizens shall convey all of its right title and interest in all Permits necessary or desirable for the ownership and operation of the Sewage Treatment Assets to Bolingbrook. Citizens will use its good faith reasonable efforts to effectuate the transfer of such Permits to Bolingbrook and shall cooperate in good faith with all efforts by Bolingbrook to have the Permits transferred to Bolingbrook or issued or reissued in the name of Bolingbrook including providing written

authorization for such transfer or issuance or reissuance. Any filing, transfer or other fees associated with such transfer or issuance of Permits to Bolingbrook shall be borne by Citizens. Bolingbrook or Citizens, as applicable, will submit applications for approvals of any transfer or issuance or reissuance of such Permits by October 1, 1997. In the event transfer, issuance or reissuance is not completed by the Closing Date, pending transfer to Bolingbrook or issuance of such Permits in Bolingbrook's name, Bolingbrook shall operate the Sewage Treatment Assets by license from and pursuant to Citizens' authority.

Section 7.7. Accounts Receivable.

Citizens and Bolingbrook shall each endeavor to read all applicable meters on the Closing Date or as close and prior to the Closing Date as practicable. From such readings, Citizens and Bolingbrook shall determine the current billings for their own respective services provided in connection with the subject utility assets to be conveyed. Within 60 days of the Closing, Citizens and Bolingbrook will each perform any necessary procedure to determine the final actual amount of accounts receivable and unbilled charges attributable to the respective party's conveyed assets as of the Closing.

Each party shall then be responsible for the collection of its respective accounts receivable and unbilled charges after the Closing; however, the parties shall reasonably cooperate with one another to assist the other party in the collection of outstanding accounts receivable and unbilled charges after the Closing.

7.8. Apportionment of Current Operating Expenses.

At the Closing, any billings for electricity, gas, telephone, taxes and other current operating expenses attributable to a party's own conveyed assets, and to the extent such expenses were incurred by the respective party prior to the Closing, will be paid by the party conveying the subject assets. In addition, within 60 days after the Closing, each party shall identify, with respect to its own conveyed assets, any current operating expenses found not to have been apportioned as required by this Section 7.8. Each party shall, within 60 days of the Closing Date, pay any such current operating expenses not paid at Closing.

ARTICLE VIII

Representations and Warranties of Citizens

With respect to the Sewage Treatment Assets, Citizens hereby represents and warrants to Bolingbrook as follows (it being understood that Citizens is making no representations or warranties with respect to any business or activities of Citizens other than with respect to the Sewage Treatment Assets):

Section 8.1. Authority.

Citizens has full power and authority to enter into and perform this Agreement and to carry out the transactions contemplated hereby.

Section 8.2. Validity.

This Agreement has been, and the documents delivered at Closing will be, duly executed and delivered and constitute lawful,

valid and legally binding obligations of Citizens, enforceable in accordance with their respective terms.

Section 8.3. Due Organization.

Citizens is a corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois.

Section 8.4. No Conflict.

The execution, delivery and performance of this Agreement by Citizens shall not, whether with notice, the lapse of time or both, (a) conflict in any respect with, result in the breach, termination or acceleration of, or constitute a default under, any agreement, commitment, contract, license, permit, indenture, lease or other instrument to which Citizens is a party or by which Citizens or its assets, rights or properties are bound; (b) constitute a violation of any law, regulation, order, writ, judgment, injunction or decree applicable to Citizens or its assets, rights or properties; or (c) result in the creation of any lien upon the assets, rights or properties of Citizens.

Section 8.5. List of Material Contracts.

Except for those which will expire prior to the Closing Date, Exhibit B-5 hereto lists all contracts, agreements, understandings and commitments to which Citizens is a party (whether written or oral), that apply to the Sewage Treatment Assets, including, without limitation, the following:

- (a) Contracts for the purchase or sale of real or personal property (tangible or intangible), or for the grant or receipt

of any option or preferential rights to purchase or sell any such property;

- (b) Real estate leases, personal property leases, insurance, and licenses and permits;
- (c) Any contract for capital expenditures or for the purchase of goods or services;
- (d) Any deed, lease, easement, agreement or other instrument affecting any right, title or interest in or to real property;
- (e) Any contract with any government or any agency or instrumentality thereof;
- (f) Memoranda of agreements or understanding currently in effect with any regulatory agency or governmental authority;
- (g) Any contract entered into with a developer;
- (h) Any contract or agreement in connection with the annexation of property;
- (i) Any maintenance or vendor contract;
- (j) The judicial Consent Decree in U.S. v. Citizens, Case No. 92 C 5132, entered March 21, 1995 and modified May 22, 1996, with respect to STP #1 (the "STP #1 Consent Decree");
- (k) The administrative Agreed Order signed by the United States Environmental Protection Agency on March 10, 1995 in Docket No. V-W-95-AO-1, with respect to STP #2 (the "STP #2 Administrative Order,"); and
- (l) Contracts currently in negotiation by Citizens of the type that, if entered into, would be required to be listed on Exhibit B-5 hereto.

Citizens has made available to Bolingbrook complete and correct copies of all written contracts, agreements, understandings and commitments (including amendments thereto) listed on Exhibit B-5 hereto, and complete and correct descriptions in writing of any contracts, agreements, understandings and commitments listed on Exhibit B-5 that are not in writing.

Section 8.6. Absence of Defaults.

(a) Citizens is not in default under the terms of any contract, agreement, understanding or commitment listed on Exhibit B-5 hereto.

(b) No party to any of the contracts, agreements, understandings and commitments listed on Exhibit B-5 has notified Citizens of its intention to cease to perform any aspect of any such contract, agreement, understanding or commitment.

(c) Each contract, agreement, understanding and commitment listed on Exhibit B-5 is valid and enforceable and in full force and effect.

Section 8.7. Interim Change.

Except as otherwise required under Paragraphs 6.1(c) and (d), Citizens represents and warrants as follows: Since August 1, 1996, there has not been (a) any change in the financial condition, assets, liabilities, personnel or business involving the Sewage Treatment Assets or in any relationship with suppliers, customers, distributors, lenders, lessors or others, except changes in the ordinary course of business; (b) any damage, destruction or loss, whether or not covered by insurance, adversely affecting the Sewage

Treatment Assets; (c) any forgiveness or cancellation of debts or claims, waiver of any rights or any discharge or satisfaction of any lien, charge or encumbrance or payment of any liability or obligation, other than current liabilities in the ordinary course of business; (d) any event or condition of any character adversely affecting the Sewage Treatment Assets; or (e) any decrease in the net book value of the Sewage Treatment Assets. Since August 1, 1996 the Sewage Treatment Assets have not become subject to any liability or obligation, contingent or otherwise, except current liabilities and contractual obligations in the ordinary course of business in amounts consistent with past practices and upon terms and conditions not more onerous than those generally available to competitors of Citizens. Since August 1, 1996, Citizens has made no major decisions affecting the Sewage Treatment Assets, including (i) changes in discretionary costs (ii) proposed new contracts or variations in existing contracts; (iii) any capital expenditures or deferral of capital expenditures; (iv) deviation from operating budgets or plans or (v) any other matters affecting the long-term course of the Sewage Treatment Assets.

Section 8.8. Title to Assets.

Citizens is the sole and exclusive legal and equitable owner of all right, title and interest in and has good and marketable title to all of the Sewage Treatment Assets. Except as identified in the attached Exhibits, none of the Sewage Treatment Assets which Citizens purports to own are subject to (a) any title defect or objection; (b) any contract of lease, license or sale; (c) any

security interest, mortgage, pledge, lien, charge or encumbrance of any kind or character, direct or indirect, whether accrued, absolute, contingent or otherwise; (d) any royalty or commission arrangement; or (e) any claim, covenant or restriction. Each of the Sewage Treatment Assets, whether real or personal, owned or leased, has been well maintained and is in good operating condition and repair (with the exception of normal wear and tear), and is free from defects other than such minor defects as do not interfere with the continued use thereof in the conduct of normal operations or materially adversely affect the resale value thereof.

Section 8.9. Real Estate.

- (a) Exhibit B-3 sets forth an accurate, correct and complete list of each parcel of real property included in the Sewage Treatment Assets, such list including a street address, and Exhibit B-5 sets forth an accurate, correct and complete list of all contracts and agreements, oral or written, relating to or affecting the real property or any interest therein (except for those which will expire prior to the Closing Date. Citizens has delivered to Bolingbrook accurate, correct and complete copies of all such contracts and agreements. Citizens is the sole and exclusive legal and equitable owner of all right, title and interest in and has good, marketable and insurable title to, and is in possession of, all real property which it purports to own, in each case (except as otherwise disclosed in the attached Exhibits) free and clear of all tenancies and other possessory interests, security

interests, conditional sale or other title retention agreements, liens, encumbrances, mortgages, pledges, assessments, covenants, restrictions, reservations, options, rights of first refusal, defects in title, encroachments and other burdens. All contracts, agreements and undertakings affecting the real property are set forth in Exhibit B-5 (except for those which will expire prior to the Closing Date) and are legally valid and binding and in full force and effect, and there are no defaults, offsets, counterclaims or defenses thereunder, and Citizens has received no notice of default, offset, counterclaim or defense under any such contracts or agreements.

- (b) Citizens has delivered to Bolingbrook accurate, correct and complete copies of all existing title insurance policies, title reports, surveys, environmental audits and similar reports, if any with respect to each parcel of real property.

Section 8.10. Taxes.

- (a) All taxes due and payable on or before the Closing Date, with respect to the Sewage Treatment Assets, have been (or will be) paid prior to the Closing Date.
- (b) No agreement or other document extending or having the effect of extending, the period of assessment or collection of any taxes has been filed with the IRS or any other taxing authority.

Section 8.11. Legal Proceedings.

Citizens is not engaged in or a party to or threatened with any action, suit, proceeding, complaint, charge, hearing, investigation or arbitration or other method of settling disputes or disagreements; and, upon due inquiry, Citizens has no knowledge, anticipation, or notice of any reasonable basis for any such action. Citizens has received no notice of any investigation threatened or contemplated by any foreign, Federal, state or local governmental or regulatory authority, including those involving the safety of products, the working conditions of employees, employment practices or policies, or compliance with environmental regulations. Other than the STP #1 Consent Decree and the STP #2 Administrative Order, Citizens is not subject to any judgment, order (except ICC orders), writ, injunction, stipulation or decree of any court or any governmental agency or any arbitrator.

Section 8.12. Cure of Defaults.

For all purposes of this Agreement, the existence or occurrence of any events or circumstances that constitute or cause a breach by Citizens of a representation or warranty set forth in this Agreement shall not constitute a breach of such representation or warranty if such event or circumstance is cured or no longer continuing on or prior to the Closing Date.

Section 8.13. Disclaimer.

Except as set forth in this Article VIII, including the Exhibits referred to therein, Citizens makes no other representation or warranty, express or implied, including, without

limitation, any warranty of merchantability, suitability, fitness for a particular purpose, or quality, with respect to any of the assets being so transferred, or as to the condition or workmanship thereof or the absence of any defects therein, whether latent or patent. In addition thereto, Bolingbrook acknowledges that the Sewage Treatment Assets have been utilized in the treatment of sewage for a period of approximately 20 years, and that no hazards known to Citizens are contained in or around such assets which would be unusual for property so used in a sewage treatment capacity. It is acknowledged and understood by Bolingbrook that the lagoon which is a part of STP #1 has been utilized for wastewater retention. It is further understood and agreed by Bolingbrook that Citizens makes no representation or warranty as to the Sewage Treatment Assets' suitability, whether part of STP #1 or STP #2, for any other use or purpose.

ARTICLE IX

Representations and Warranties of Bolingbrook

With respect to the Water System Assets, Bolingbrook hereby represents and warrants to Citizens as follows (it being understood that Bolingbrook is making no representations or warranties with respect to any business or activities of Bolingbrook other than with respect to the Water System Assets):

Section 9.1. Authority.

Bolingbrook has full power and authority to enter into and perform this Agreement and to carry out the transactions

contemplated hereby, and this Agreement and the conveyance are in compliance with the Illinois Municipal Code.

Section 9.2. Validity.

This Agreement has been, and the documents delivered at Closing will be, duly executed and delivered and constitute lawful, valid and legally binding obligations of Bolingbrook, enforceable in accordance with their respective terms.

Section 9.3. Due Organization.

Bolingbrook is a municipal corporation and home rule unit of the State of Illinois.

Section 9.4. No Conflict.

The execution, delivery and performance of this Agreement by Bolingbrook shall not, whether with notice, the lapse of time or both, (a) conflict in any respect with, result in the breach, termination or acceleration of, or constitute a default under, any agreement, commitment, contract, license, permit, indenture, lease or other instrument to which Bolingbrook is a party or by which Bolingbrook or its assets, rights or properties are bound; (b) constitute a violation of any law, regulation, order, writ, judgment, injunction or decree applicable to Bolingbrook or its assets, rights or properties; or (c) result in the creation of any lien upon the assets, rights or properties of Bolingbrook.

Section 9.5. List of Contracts.

Except for those which will expire prior to the Closing Date, Exhibit A-5 hereto lists all contracts, agreements, understandings and commitments to which Bolingbrook is a party (whether written or

oral), that apply to the Water System Assets, including, without limitation, the following:

- (a) Contracts for the purchase or sale of real or personal property (tangible or intangible) , or for the grant or receipt of any option or preferential rights to purchase or sell any such property;
- (b) Real estate leases, personal property leases, insurance, and licenses and permits;
- (c) Any contract for capital expenditures or for the purchase of goods or services;
- (d) Any deed, lease, easement, agreement or other instrument affecting any right, title or interest in or to real property;
- (e) Any contract with any government or any agency or instrumentality thereof;
- (f) Memoranda of agreements or understanding currently in effect with any regulatory agency or governmental authority; and
- (g) Contracts currently in negotiation by Bolingbrook of the type that, if entered into, would be required to be listed on Exhibit A-5 hereto.

Bolingbrook has made available to Citizens complete and correct copies of all written contracts, agreements, understandings and commitments (including amendments thereto) listed on Exhibit A-5 hereto, and complete and correct descriptions in writing of any contracts, agreements, understandings and commitments listed on Exhibit A-5 that are not in writing.

Section 9.6. Absence of Defaults.

(a) Bolingbrook is not in default under the terms of any contract, agreement, understanding or commitment listed on Exhibit A-5 hereto.

(b) No party to any of the contracts, agreements, understandings and commitments listed on Exhibit A-5 has notified Bolingbrook of its intention to cease to perform any aspect of any such contract, agreement, understanding or commitment.

(c) Each contract, agreement, understanding and commitment listed on Exhibit A-5 is valid and enforceable and in full force and effect.

Section 9.7. Interim Change.

Since August 1, 1996, there has not been (a) any change in the financial condition, assets, liabilities, personnel or business of the Water System Assets or in any relationship with suppliers, customers, distributors, lenders, lessors or others, except changes in the ordinary course of business; (b) any damage, destruction or loss, whether or not covered by insurance, adversely affecting the Water System Assets; (c) any forgiveness or cancellation of debts or claims, waiver of any rights or any discharge or satisfaction of any lien, charge or encumbrance or payment of any liability or obligation, other than current liabilities in the ordinary course of business; (d) any event or condition of any character adversely affecting the Water System Assets; or (e) any decrease in the net book value of the Water System Assets. Since August 1, 1996 the Water System Assets have not become subject to any liability or

obligation, contingent or otherwise, except current liabilities and contractual obligations in the ordinary course of business in amounts consistent with past practices and upon terms and conditions not more onerous than those generally available to competitors of Bolingbrook. Since August 1, 1996 Bolingbrook has made no major decisions affecting the Water System Assets, including (i) changes in discretionary costs (ii) proposed new contracts or variations in existing contracts; (iii) any capital expenditures or deferral of capital expenditures; (iv) deviation from operating budgets or plans or (v) any other matters affecting the long-term course of the Water System Assets.

Section 9.8. Title to Assets.

Bolingbrook is the sole and exclusive legal and equitable owner of all right, title and interest in and has good and marketable title to all of the Water System Assets. Except as identified in the attached Exhibits, none of the Water System Assets which Bolingbrook purports to own are subject to (a) any title defect or objection; (b) any contract of lease, license or sale; (c) any security interest, mortgage, pledge, lien, charge or encumbrance of any kind or character, direct or indirect, whether accrued, absolute, contingent or otherwise; (d) any royalty or commission arrangement; or (e) any claim, covenant or restriction. Each of the Water System Assets, whether real or personal, owned or leased, has been well maintained and is in good operating condition and repair (with the exception of normal wear and tear), and is free from defects other than such minor defects as do not interfere

with the continued use thereof in the conduct of normal operations or materially adversely affect the resale value thereof.

Section 9.9 Real Estate.

- (a) Exhibit A-3 sets forth an accurate, correct and complete list of each parcel of real property included in the Water System Assets, such list including a street address and complete legal description, and Exhibit A-5 sets forth an accurate, correct and complete list of all contracts and agreements, oral or written, relating to or affecting the real property or any interest therein (except for those which will expire prior to the Closing Date). Bolingbrook has delivered to Citizens accurate, correct and complete copies of all such contracts and agreements. Bolingbrook is the sole and exclusive legal and equitable owner of all right, title and interest in and has good, marketable and insurable title in fee simple absolute to, and is in possession of, all real property which it purports to own, in each case (except as otherwise disclosed in the Exhibits) free and clear of all tenancies and other possessory interests, security interests, conditional sale or other title retention agreements, liens, encumbrances, mortgages, pledges, assessments, easements, rights of way, covenants, restrictions., reservations, options, rights of first refusal, defects in title, encroachments and other burdens. All contracts, agreements and undertakings affecting the real property are set forth in Exhibit A-5 (except for those which will expire prior to the Closing Date) and are

legally valid and binding and in full force and effect, and there are no defaults, offsets, counterclaims or defenses thereunder, and Bolingbrook has received no notice of default, offset, counterclaim or defense under any such contracts or agreements.

- (b) Bolingbrook has delivered to Citizens accurate, correct and complete copies of all existing title insurance policies, title reports, surveys, environmental audits and similar reports, if any, with respect to each parcel of real property.

Section 9.10. Legal Proceedings.

Bolingbrook is not engaged in or a party to or threatened with any action, suit, proceeding, complaint, charge, hearing, investigation or arbitration or other method of settling disputes or disagreements; and, upon due inquiry, Bolingbrook has no knowledge, anticipation, or notice of any reasonable basis for any such action. Bolingbrook has received no notice of any investigation threatened or contemplated by any foreign, Federal, state or local governmental or regulatory authority, including those involving the safety of products, the working conditions of employees, employment practices or policies, or compliance with environmental regulations. Bolingbrook is not subject to any judgment, order, writ, injunction, stipulation or decree of any court or any governmental agency or any arbitrator.

Section 9.11. Cure of Defaults.

For all purposes of this Agreement, the existence or occurrence of any events or circumstances that constitute or cause

a breach by Bolingbrook of a representation or warranty set forth in this Agreement shall not constitute a breach of such representation or warranty if such event or circumstance is cured or no longer continuing on or prior to the Closing Date.

Section 9.12. Taxes.

(a) All taxes due and payable on or before the Closing Date, with respect to the Water System Assets, have been (or will be) paid prior to the Closing Date.

(b) No agreement or other document extending, or having the effect of extending, the period of assessment or collection of any taxes has been filed with the IRS or any other taxing authority.

Section 9.13. Disclaimer.

Except as set forth in this Article IX, including the Exhibits referred to therein, Bolingbrook makes no other representation or warranty, express or implied, including, without limitation, any warranty of merchantability, suitability, fitness for a particular purpose, or quality, with respect to any of the assets being so transferred, or as to the condition or workmanship thereof or the absence of any defects therein, whether latent or patent.

ARTICLE X

Covenants of Citizens

Citizens hereby agrees to keep, perform and fully discharge the following covenants and agreements.

Section 10.1. Interim Conduct of Business.

From the date hereof until Closing, Citizens shall preserve, protect and maintain the Sewage Treatment Assets, and shall operate

the Sewage Treatment Assets consistent with prior practice and in the ordinary course of business. Without limiting the generality of the foregoing, from the date hereof until the Closing, except for transactions expressly approved in writing by Bolingbrook, Citizens shall, with respect to the Sewage Treatment Assets:

- (a) Maintain the properties of the Sewage Treatment Assets in good repair, order and condition, reasonable wear and tear excepted;
- (b) Maintain its books, accounts and records in the usual, regular and ordinary manner on a basis consistent with prior years;
- (c) Not enter into, amend or terminate, or agree to enter into, amend or terminate, any contract, agreement, commitment or understanding in relation to the Sewage Treatment Assets;
- (d) Not sell, lease or otherwise dispose of or agree to sell, lease or otherwise dispose of, any of the Sewage Treatment Assets, rights or claims, except in the ordinary course of business; or
- (e) Not incur or become subject to, not agree to incur or become subject to, any debt, obligations or liability, contingent or otherwise, except current liabilities and contractual obligations in the ordinary course of business.

From the date hereof through the Closing, Citizens shall confer on a regular and frequent basis with one or more designated representatives of Bolingbrook to report material operational matters and the general status of ongoing operations of the Sewage Treatment Assets. Citizens shall promptly notify Bolingbrook of

any material change in the Sewage Treatment Assets and shall keep Bolingbrook fully informed of such events and permit Bolingbrook's representatives to participate in all discussions relating thereto.

Section 10.2. Access to Information.

Prior to the Closing, Bolingbrook may, at its own risk and expense, make such investigation of the business and properties of the Sewage Treatment Assets as Bolingbrook may desire; and, upon reasonable notice, Citizens shall give to Bolingbrook and its counsel accountants and other representatives reasonable access, during normal business hours throughout the period prior to the Closing, to the property, books, commitments, agreements, records, maps, files and personnel of Citizens relating to the Sewage Treatment Assets, and Citizens shall furnish to Bolingbrook during that period all copies of information concerning the Sewage Treatment Assets as Bolingbrook may reasonably request subject to applicable law.

Section 10.3. Best Efforts.

Citizens shall use its best efforts to consummate the transactions contemplated by this Agreement and shall not take any other action inconsistent with its obligations hereunder or which could hinder or delay the consummation of the transactions contemplated hereby. From the date hereof through the Closing Date, Citizens shall use its best efforts to fulfill the conditions to its obligations hereunder and to cause its representations and warranties to remain true and correct in all material respects as of the Closing Date.

ARTICLE XI

Covenants of Bolingbrook

Bolingbrook hereby agrees to keep, perform and fully discharge the following covenants and agreements.

Section 11.1. Interim Conduct of Business.

From the date hereof until Closing, Bolingbrook shall preserve, protect and maintain the Water System Assets, and shall operate the Water System Assets consistent with prior practice and in the ordinary course of business. Without limiting the generality of the foregoing, from the date hereof until the Closing, except for transactions expressly approved in writing by Citizens, Bolingbrook shall, with respect to the Water System Assets:

- (a) Maintain the properties of the Water System Assets in good repair, order and condition, reasonable wear and tear excepted;
- (b) Maintain its books, accounts and records in the usual, regular and ordinary manner on a basis consistent with prior years;
- (c) Not enter into, amend or terminate, or agree to enter into, amend or terminate, any contract, agreement, commitment or understanding in relation to the Water System Assets;
- (d) Not sell, lease or otherwise dispose of or agree to sell, lease or otherwise dispose of, any of the Water System Assets, rights or claims, except in the ordinary course of business;
or

- (e) Not incur or become subject to, not agree to incur or become subject to, any debt, obligations or liability, contingent or otherwise, except current liabilities and contractual obligations in the ordinary course of business.

From the date hereof through the Closing, Bolingbrook shall confer on a regular and frequent basis with one or more designated representatives of Citizens to report material operational matters and the general status of on-going operations of the Water System Assets. Bolingbrook shall promptly notify Citizens of any material change in the Water System Assets and shall keep Citizens fully informed of such events and permit Citizens' representatives to participate in all discussions relating thereto.

Section 11.2. Access to Information.

- (a) Prior to the Closing, Citizens may, at its own risk and expense, make such investigation of the business and properties of the Water System Assets as Citizens may desire; and, upon reasonable notice, Bolingbrook shall give to Citizens and its counsel, accountants and other representatives reasonable access, during normal business hours throughout the period prior to the Closing, to the property, books, commitments, agreements, records, maps, files and personnel of Bolingbrook relating to the Water System Assets, and Bolingbrook shall furnish to Citizens during that period all copies of information concerning the Water System Assets as Citizens may reasonably request subject to applicable law.

Section 11.3. Best Efforts.

Bolingbrook shall use its best efforts to consummate the transactions contemplated by this Agreement and shall not take any other action inconsistent with its obligations hereunder or which could hinder or delay the consummation of the transactions contemplated hereby. From the date hereof through the Closing Date, Bolingbrook shall use its best efforts to fulfill the conditions to its obligations hereunder and to cause its representations and warranties to remain true and correct in all material respects as of the Closing Date.

ARTICLE XII

Service Areas

Section 12.1. Citizens' Water and Sewage Collection Service Areas.

From and after the Closing of the asset exchange, Citizens' water service area shall include all of the Village of Bolingbrook and any territory subsequently annexed to the Village. Citizens' sewage collection service area shall include the area designated as Citizens Service Area on Exhibit D. Citizens covenants to promptly apply for and diligently pursue any certifications required from the Illinois Commerce Commission in order to provide Lake Michigan water service in its service area. Until certification is obtained, Citizens agrees to supply water and operate and maintain utility systems on a contractual basis for non-certificated areas at its then-current rates and tariffs.

Section 12.2. Bolingbrook Sanitary Sewage Treatment Service Area.

From and after the closing of the asset exchange pursuant to Article III, the Bolingbrook Sanitary Sewage Treatment Service Area shall include all of the Village of Bolingbrook and any territory subsequently annexed to Bolingbrook. Bolingbrook's sewage collection service area shall include the area designated as Bolingbrook Service Area on Exhibit D.

Section 12.3. Sewer Tap-on Fees.

Bolingbrook agrees that it will not establish differential sewer tap-on fees based on the fact that a customer is located in Citizens' sewage collection area rather than in the Bolingbrook sewage collection area.

ARTICLE XIII

Service Quality and Cooperation

Section 13.1. Cooperation Between Citizens and Bolingbrook.

Both Citizens and Bolingbrook are committed to providing quality utility services to all Bolingbrook residents. In furtherance of this goal, Citizens and Bolingbrook agree to continue to have open discussions with respect to utility services, to respond to the other party's concerns promptly, and to coordinate their services to the extent feasible for the benefit of all Bolingbrook residents.

Section 13.2. Stand-by Wells.

After Lake Michigan water service is initiated, Citizens shall keep sufficient existing wells in active, standby status to be able to supply at least the current average use per day.

Section 13.3. Billing Information.

From and after the Closing, Citizens will supply an updated list of the names and addresses of all Citizens customers within the Village of Bolingbrook on a continuous basis. The list shall be divided into those customers who receive water only service from Citizens and those customers who receive water and sewage collection services from Citizens.

In addition, from and after the closing Citizens shall provide Bolingbrook with monthly water usage information for each of Citizens' customers in Bolingbrook. The information shall be supplied on a monthly basis in accordance with Citizens' meter reading schedule. The water usage information shall be supplied either in a computer format which is used by Citizens or by hard copy, whichever option is selected by Bolingbrook in its discretion. Bolingbrook will use the customer water usage information supplied by Citizens for billing purposes.

Citizens shall provide the information required by this Section for as long as Citizens supplies water to Bolingbrook residents.

Section 13.4. Additional Covenants By Citizens and CWRC With Respect to the Bolingbrook Lake Michigan Water Contract.

Citizens and CWRC covenant and agree that, after the Bolingbrook Lake Michigan Water Contract has been assigned to

Citizens, it shall not modify, amend, abrogate, alter, or permit any modification, amendment, abrogation or alteration, in any fashion whatsoever, to the following sections of the Bolingbrook Lake Michigan Water Contract, without the prior, express written approval of the Mayor and Board of Trustees of the Village of Bolingbrook:

- (a) Section 3.1;
- (b) Section 7.1;
- (c) Section 7.2;
- (d) Section 7.5;
- (e) Section 7.6;
- (f) Section 10.1;
- (g) Section 10.2; and
- (h) Section 10.3.

Notwithstanding anything to the contrary in any other prior Agreement, Citizens and CWRC agree that Bolingbrook shall retain the right to enforce the aforesaid Sections of the Bolingbrook Lake Michigan Water Contract as a third party beneficiary thereof.

Bolingbrook shall have the right to enforce or compel performance of any of the covenants identified in this Section 13.4 in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance until January 1, 2037.

Section 13.5. Bolingbrook to Conform Water Rate.

Prior to the Closing Date, Bolingbrook agrees to conform its water rate so as to match the form and structure of the then in effect Citizens water rate.

Section 13.6. Conveyance of STP #1 by Citizens. On the Closing Date, Citizens shall convey all of its right, title and interest in the STP #1 site to Bolingbrook by warranty deed, notwithstanding anything in the STP #1 Agreement to the contrary. Provided that Citizens has performed all of the work required by the STP #1 Agreement, Citizens shall be relieved of any further obligations under the STP #1 Agreement at the time of conveyance of the STP #1 site to Bolingbrook.

Section 13.7. Provision of Adequate Sewage Treatment Capacity.

Bolingbrook agrees to provide and maintain adequate sewage treatment services to all of Citizens sewage collection customers within Citizens Service Area as shown on Exhibit D attached hereto and made a part hereof, such obligation to include, without limitation, the construction of any additional facilities or the provision of such other additional capacity as may be necessary in order to provide the required sewage treatment service.

ARTICLE XIV

Miscellaneous

Section 14.1. Notices.

All notices provided for herein shall be in writing and shall be delivered either in person or by United States registered mail, postage prepaid, return receipt requested, addressed as follows:

To Citizens:

Citizens Utilities Company of Illinois
1000 Internationale Parkway
Woodridge, Illinois 60517-4924
Attn: General Manager

To Village:

Village of Bolingbrook
375 West Briarcliff Road
Bolingbrook, Illinois 60440
Attn: Mayor and Village Manager

To CWRC:

Citizens Water Resources Company
1000 Internationale Parkway
Woodridge, Illinois 60517-4924
Attn: General Manager

All such notices shall be deemed received on the date of delivery, if delivered in person, or if mailed, on the date which is two business days after the date the notice is deposited in the U.S. Mail.

Section 14.2. Indemnification.

Each party shall, for one year subsequent to the Closing Date, indemnify and hold harmless the other from and against any and all loss, damage, expense, suit, action, claim, liability or obligation related to, caused by or arising from any misrepresentation, breach of warranty or failure to fulfill any covenant or agreement contained herein. Any party seeking indemnification shall give

prompt written notice to the indemnifying party of the facts and circumstances giving rise to the claim. The loss, damage and expense incurred by a party shall be determined on a net after-tax basis and shall take into account any insurance proceeds received by such party.

All representations, warranties, covenants, indemnities and agreements will survive Closing, but will terminate one year after Closing, except those in Sections 5.1, 5.2, 5.3, 5.5, 7.6, 12.1, 12.2, 12.3, 13.1, 13.2, 13.3, 13.4, 13.7, and 14.7 (which shall survive until the obligations expressed therein have been completely satisfied. No claim may be brought as to a representation, warranty, covenant, indemnity or agreement after its date of termination.

Section 14.3. Amendments.

This Agreement shall not be modified or amended in any way except in writing approved by the parties hereto.

Section 14.4. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of Illinois without regard to the conflicts of laws provisions thereof.

Section 14.5. Severability.

The invalidity or unenforceability of any provision of this agreement shall not impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement.

Section 14.6. Binding Nature.

This Agreement, and the terms and provisions herein, shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns pursuant to Section 14.8.

Section 14.7 Liquid Sludge.

Citizens may deliver liquid sewage sludge to Bolingbrook's sewage plant (Citizens' former STP #2) to be processed by Bolingbrook on equipment in place at the time of Closing for up to five years after Closing, a volume not to exceed 100,000 gallons per week. Citizens shall compensate Bolingbrook for operating expenses directly relative to dewatering, treating, and disposal of the sludge received from Citizens. Citizens shall pay Bolingbrook \$4.70/1000 gallons (Four Dollars and Seventy Cents per thousand gallons) for dewatering the sludge and \$5.40/1000 gallons (Five Dollars and Forty Cents per thousand gallons) for sludge disposal. The compensation paid to Bolingbrook shall be based on the gallons of liquid sludge Citizens hauls to Bolingbrook for processing. These costs shall be reviewed annually and shall be modified as appropriate, given Bolingbrook's operating costs associated therewith.

Section 14.8. Assignability.

No party shall assign or transfer this Agreement or any rights or interests therein without the prior written consent of the other parties; provided that Citizens or CWRC may assign this Agreement to any wholly owned subsidiary, or any parent or affiliate, or for collateral purposes.

Section 14.9. Incorporation by Reference.

All exhibits and schedules attached hereto are hereby incorporated into this Agreement by this reference and expressly made a part of this Agreement.

Section 14.10. Further Assurances.

Except as expressly provided herein to the contrary, the parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before and after the Closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

IN WITNESS WHEREOF, Citizens, Bolingbrook and CWRC have caused this Agreement to be signed and attested to by their duly authorized officers, and their seals affixed hereto, all as of the date first hereinabove set forth.

CITIZENS UTILITIES COMPANY OF ILLINOIS

(Seal)

By: *Donald E. Walcott*
Title: VICE PRESIDENT

Attest: *Chas. W.*
Title: *Sury*

CITIZENS WATER RESOURCES COMPANY

(Seal)

By: *Donald E. Walcott*
Title: VICE PRESIDENT

Attest: *Chas. W.*
Title: *Sury*

VILLAGE OF BOLINGBROOK

(Seal)

By: *Ray E. Blair*
Title: Mayor

Attest: *Carole S. Penning*
Title: Village Clerk